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10 **UNITED STATES BANKRUPTCY COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **OAKLAND DIVISION**

13 In re:	)	
	)	
14 <b>ANDRONICO'S MARKETS, INC.,</b>	)	Case No. 11-48963-EDJ-11
A California Corporation, aka	)	
15 Andronico's Community Markets,	)	Chapter 11
	)	
16 Debtor.	)	Date: September 20, 2011
	)	Time: 10:30 a.m.
17 1200 Irving Street	)	Place: United States Bankruptcy Court
San Francisco, CA 94122	)	1300 Clay Street, Courtroom 215
	)	Oakland, CA 94612
18 Employer Tax I.D. No.: 94-1307395	)	Judge: Honorable Edward D. Jellen
19	)	

20 **DECLARATION OF WILLIAM R. BRINKMAN IN SUPPORT OF MOTION FOR ORDER**  
21 **(1) MODIFYING BID PROCEDURES, AND (2) AMENDING BID PROCEDURES ORDER**

22 I, William R. Brinkman, declare:

23 1. I am a principal of Bailey, Elizondo & Brinkman LLC ("BEBLLC"), the proposed  
24 financial advisor for Andronico's Markets, Inc., the debtor and debtor in possession in the above-  
25 captioned bankruptcy case ("Andronico's," the "Company" or the "Debtor"), and am authorized to  
26 make this Declaration on behalf of the Debtor. I have personal knowledge of the matters stated  
27 herein except as to those matters stated on information and belief, and as to those matters I am  
28 informed and believe them to be true. If called as a witness, I could and would testify competently

1 as to those matters.

2 2. I submit this Declaration in support of the MOTION FOR ORDER (1) MODIFYING BID  
3 PROCEDURES, AND (2) AMENDING BID PROCEDURES ORDER (the “Motion”).

4 3. At the time the Bid Procedures<sup>1</sup> were approved and the Bid Procedures Order was  
5 entered, the Debtor and Renwood had not yet reached final agreement on the terms of the Purchase  
6 Agreement.

7 4. After extensive negotiations, the Debtor and Renwood reached agreement on the final  
8 terms of the Purchase Agreement. On September 16, 2011, the Debtor and Renwood executed the  
9 Purchase Agreement subject to Court approval of the Sale following the opportunity for overbids.

10 5. The Bid Procedures presently do not harmonize with the final terms of the Purchase  
11 Agreement. Specifically, the Purchase Price (as defined in the Purchase Agreement) has been  
12 reduced from \$20 million to \$16 million. Consequently, the Debtor requires modification to the Bid  
13 Procedures in order to accurately reflect the Purchase Price and the corresponding reduced initial  
14 minimum bid.

15 6. I am informed and believe and on that basis allege that the relief requested in the  
16 Motion is reasonable under the circumstances. The Debtor and Renwood have negotiated in good  
17 faith to finalize the Purchase Agreement, and the relief requested in the Motion is necessary so that  
18 the Bid Procedures and the Bid Procedures Order will accurately reflect the terms of the Purchase  
19 Agreement.

20 7. The Debtor has utilized the services of BEBLLC since October 2010 to serve as its  
21 financial and restructuring advisor to assist the Company in the evaluation of restructuring  
22 alternatives, negotiation with the its lenders, and in canvassing the marketplace for potential  
23 investors or buyers. BEBLLC does not believe that the reduction of the Purchase Price will be  
24 detrimental to the auction process or to the proposed Sale.

25 8. During the post-petition period, BEBLLC has updated and refreshed the sale  
26 marketing materials, updated the online data room, and created a proposed transaction summary, a

27 \_\_\_\_\_  
28 <sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed in the Motion.

1 “teaser”, that was emailed during the week of September 5, 2011 to approximately 1,500 potential  
2 investors, capital sources, and advisors, who are BEBLLC contacts from its proprietary database, a  
3 true and correct copy of the “teaser” is attached hereto as **Exhibit “A”** and incorporated herein by  
4 reference. The 46 prospective candidates, excluding those who asked to be removed from the list,  
5 were also emailed the teaser. BEBLLC has been actively responding to inbound inquiries from  
6 potential bidders as a result of the teaser email and general inquiries stemming from the publicity  
7 generated by the Chapter 11 filing. Although approximately 15 new candidates have indicated some  
8 level of interest stemming from the teaser marketing efforts, only three have executed non-disclosure  
9 agreements, and one of those is a retail and equipment liquidator. BEBLLC anticipates at least two  
10 more candidates will execute non-disclosure agreements.

11 9. With respect to those persons who have indicated interest in the possibility of  
12 presenting a bid, BEBLLC is in the process of communicating with such persons with the new  
13 Purchase Price and to respond to any questions or concerns by such potential bidders. BEBLLC has  
14 prepared a supplement to the teaser based on the reduced Purchase Price, a true and correct copy of  
15 which is attached hereto as **Exhibit “B”** and incorporated herein by reference, which will be emailed  
16 to all persons who received the original teaser (excluding those persons who requested removal from  
17 the list, duplicates and the like).

18 10. BEBLLC has contacted via telephone a majority of the initial 25 candidates that  
19 executed non-disclosure agreements to inquire if they had any continuing interest in pursuing the  
20 acquisition of Andronico’s, and none of the 25 contacted indicated that they intended to submit bids  
21 for one or more stores. However, two of the 25 contacted stated that they are continuing to evaluate  
22 the opportunity and may make a bid to purchase certain stores. BEBLLC anticipates that inquiry,  
23 and potentially due diligence, will continue for the next couple of weeks. One of the comments that  
24 candidates consistently made to BEBLLC when asked what drove the candidate’s decision to not bid  
25 was that the stalking horse bid—assumed to be \$20 million for substantially all of the company’s  
26 assets—was too high of a purchase price. Further, many of these same candidates stated that they  
27 believed that the stalking horse bidder would raise its own bid, if a competitive auction process was  
28 to occur, and likely outbid any competitive bid by credit bidding more of the stalking horse bidder’s

1 secured debt position.

2       11. I believe that the most likely potential buyers of Andronico's assets—in whole or in  
3 parts—are aware of the Section 363 sale process. Further, I believe that generally the market as a  
4 whole has concluded that a stalking horse bidder may raise its bid up to the full amount of the  
5 prepetition secured debt, which is approximately \$29 million, plus up to \$5 million related to the  
6 DIP Credit Facility. As a result, it is my opinion that potential bidders are still not likely to submit a  
7 bid if the stalking horse bid is reduced from \$20 million to \$16 million. Thus, I have concluded that  
8 the decrease of the stalking horse bid to \$16 million will not have a meaningful impact, positively or  
9 negatively, on potential bidders.

10       12. Based on the extensive marketing of the opportunity prior to the Petition Date  
11 (commencing in February 2011) and continuing into the bankruptcy case, I do not believe  
12 prolonging the auction process would result in additional bids.

13       13. It is critical that the Sale go forward as scheduled on October 13, 2011. The Purchase  
14 Agreement requires the Debtor to close the Sale by October 21, 2011. Renwood has repeatedly  
15 indicated to me that a critical component of its business plan includes the preparation and execution  
16 of the sales, marketing, and merchandising plan targeting the holiday seasons in November and  
17 December. Therefore, a closing as soon as possible in October is critical to Renwood, and is  
18 anticipated to be critical to other bidders, because of the seasonal nature of the business (November  
19 and December being the busiest months for the business). Consequently, postponement of the Sale  
20 Hearing may render the Sale less attractive to potential bidders.

21       14. In connection with the Purchase Agreement and the Sale, and pursuant to the DIP  
22 Credit Agreement and approval by the Court, the Debtor is authorized to use cash collateral and  
23 borrow up to \$5 million in the DIP Credit Facility provided by Renwood to provide ongoing  
24 working capital to the Debtor pending the Sale. The Debtor is reliant on the DIP Credit Facility to  
25 fund its operations. Any delay in the closing the Sale would cause the estate to incur additional cost  
26 and would be detrimental to the estate. Further, the milestones in the DIP Credit Facility require that  
27 the Debtor adhere to agreed upon timeframes on which to complete certain activities and actions.  
28 Among these milestones is that the Court enter orders granting the Sale Motion and Assumption

1 Motion on or before October 13, 2011, and the Sale must close on or before October 21, 2011. The  
2 DIP lender informed the Debtor, on September 17, 2011, that it failed to meet one of the required  
3 Borrower Milestones which required that the filing of the Sale Motion and the Assumption Motion  
4 by September 6. The DIP lender subsequently informed the Debtor that the DIP lender does not  
5 consent to any payments other than those related to operations until the Borrower cures the defaults.  
6 If the DIP lender were to restrict the Debtor's access to the DIP Credit Facility to fund operations, it  
7 is unlikely that the Debtor would be able to operate.

8 15. Based on my review of the DIP Credit Facility, the DIP Credit Facility matures at the  
9 earliest of: (a) October 31, 2011, (b) the effective date (b) the effective date of a plan of  
10 reorganization or liquidation for Borrower, (c) the date that is 30 days after entry of the Interim  
11 Financing Order if the Final Financing Order has not been entered by that date, (d) the sale of a  
12 material portion of the Borrower's assets in one or more transactions under Section 363 of the  
13 Bankruptcy Code, or (e) the due date determined pursuant to Section 8.2 of the DIP Credit  
14 Agreement. If the sale of the Debtor's assets is delayed, the DIP Credit Facility may expire and may  
15 not be available to the Debtor to fund its operations. Accordingly, I believe that any delay of the  
16 Sale Hearing will likely be detrimental to the Debtor's customers, vendors and employees, and to the  
17 estate as a whole.

18 I declare under penalty of perjury under the laws of the State of California and the United  
19 States that the foregoing is true and correct and that this Declaration is executed on September 19,  
20 2011.

21 /s/ William R. Brinkman  
22 William R. Brinkman  
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